

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL GABINO MARTINEZ,

Defendant.

No. 06cv1146 PK/LFG

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ORDER

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THIS MATTER came on for a status conference on September 29, 2010. The government was represented by Manuel Lucero, Esq. and Mr. Martinez appeared pro se. Upon consideration thereof,

(1) Background–Entry of Default. This case began with a complaint to recover trespass damages and unauthorized grazing fees from Mr. Martinez. Doc. 1. Mr. Martinez was served. Doc. 5. Mr. Martinez began filing a series of pleadings, one of which was struck by the magistrate judge. See Docs. 13 & 15. This court denied Mr. Martinez’s motion to dismiss for lack of jurisdiction on initial consideration and upon reconsideration. Docs. 16 & 30. The magistrate judge warned Mr. Martinez that should he not comply with the court’s orders, including attending a Rule 16 conference, sanctions might issue including a default judgment. Doc. 13 at 2-3. Mr. Martinez did not appear at the scheduling conference, and the magistrate judge

imposed a \$2,500 sanction and warned Mr. Martinez that should he not comply, the magistrate judge would recommend a default judgment. Doc. 24 at 5. When Mr. Martinez did not comply, the magistrate judge recommended a default judgment, Doc. 28 at 6, which this court imposed after overruling Mr. Martinez's objections. Doc. 32 at 5.

(2) Hearing on Damages Resulting in a Judgment. The court set the matter down for a hearing on damages, Doc. 34, but later vacated that hearing upon unopposed request of the government. Doc. 36. The court reset the hearing, and the docket reflects that the notice was sent to Mr. Martinez's Santa Fe address of record. Doc. 38. The court held the hearing—Mr. Martinez did not appear—and thereafter entered a decision and monetary judgment in favor of the government. Docs. 41-43. Mr. Martinez filed various pleadings and contended that he did not receive notice of the hearing on damages. Doc. 45 at 3 & 48 at 3.

(3) Hearing on Post-Judgment Pleadings. The court construed Mr. Martinez's objections to the proceedings as a motion to alter or amend the judgment, which the court set for an evidentiary hearing, specifically directing that Mr. Martinez be served (at the same Santa Fe address) personally as well as by mail. Doc. 53. Mr. Martinez did not consent to the court's construing his objections as a motion, Doc. 54 at 4, ¶ 4; Doc. 57 at 5, ¶ 4. Mr. Martinez would later contend that he was personally served the notice a day before the hearing on post-judgment pleadings and lacked adequate time to prepare. Doc. 57 at 4, ¶ 3. Mr. Martinez did not appear at

the hearing on post-judgment pleadings and the court denied all relief. Docs. 55 & 56. No appeal was taken.

(4) September 29, 2010 Hearing. Mr. Martinez made a variety of objections to the government's renewed effort to collect its judgment. Some of these are contained in a recently filed pleading seeking relief from the judgment. Doc. 93. When reminded of his non-appearance at prior proceedings, Mr. Martinez complained of lack of adequate notice. He also made several jurisdictional arguments which the court has already rejected. Doc. 16. He also contended that the matter was settled in the District of Arizona.

(5) In an abundance of caution, the court will direct the government to hold in abeyance any garnishment proceedings pending resolution of motions. Mr. Martinez will be given thirty days from the date of the September 29, 2010 hearing to find a lawyer to enter an appearance and file an appropriate motion.

(6) The motion to transfer the court of federal claims case to this court (Doc. 84) is denied.

IT IS SO ORDERED.

DATED this 5th day of October 2010, at Santa Fe, New Mexico.

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*Paul Kelly J.*  
United States Circuit Judge  
Sitting by Designation